IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/08/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.7670 OF 2003
AND
CRL.M.P.Nos.2702 & 5251 OF 2003.

T.E.Vallabhan ... Petitioner

-Vs-

Mrs.Godha Pushpam ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

!For petitioner : Mr.Niranjan

^For respondent : Mr.K.M.Srirangan

:O R D E R

The petitioner, who is the accused in C.C.No.4247 of 2002 on the file of the Court of Chief Metropolitan Magistrate, Chennai has filed the above criminal original petition praying to set aside the order dated 8.1.2003 made in Crl.M.P.No.2716 of 2002 in the above C.C. and to allow him to be represented by his counsel under Section 205 Cr.P.C. and permit the counsel to receive copies on his behalf.

2. The petitioner would submit that he is arrayed as the accused in the said case for an alleged offence punishable under Section 498-A IPC and that he is presently doing his advanced studies in Medicine in the United States of America after completing his MBBS at Hyderabad in India and the case has been registered on the complaint lodged by his wife with the All Women Police Station; that if the petitioner were to appear before the Court, he has to discontinue his higher studies in medicine and it is very difficult to get leave since the petitioner does not have any other source of income and has to study on the grant given by the University; that on the mis-representation of a Lawyer engaged by his father-in-law, earlier he addressed a letter to the Court below thereby undertaking to ap pear before the Court during March, 2003 and the Chief Metropolitan Magistrate, vide order dated 8.1.2003 in Crl.M.P.No.2716 of 2003 had dismissed the petition filed under Section 205 Cr.P.C.

3. During arguments, the learned counsel appearing on behalf

of the petitioner and the respondent as well would only stick to the pleadings with no additional materials placed before this Court. On the part of the learned counsel for the petitioner, he would argue to the effect that it is purely a matter of discretion of the Court under Section 205 Cr.P.C., which has to be exercised in the given facts and circumstances of the case in hand and would pray to consider the inevitable circumstance of the petitioner being not in a position to appear before the Court since he is abroad. On the part of the learned counsel for the respondent, laying emphasis not only on the reasons assigned by the lower Court for dismissing the application filed by the petitioner under Section 205 Cr.P.C. but also would insist on Section 273 Cr.P.C. wherein emphasis is laid for all the evidence to be taken in the course of the trial or other proceeding in the presence of the accused or when his personal attendance is dispensed with, in the presence of his pleader and the learned counsel for the respondent would pray to dismiss the above criminal original petition.

4. In consideration of the facts pleaded, having regard to the material placed on record and upon hearing the learned counsel for both, what this Court is given to understand is that the petitioner, who is abroad in the USA, alleged to have been admitted in a University for Post Graduate studies on scholarship, has filed the petition before the trial Court in the case registered against him on the complaint lodged by his wife/the respondent herein for an offence punishable under Section 498-A IPC under Section 205 Cr.P.C. seeking to dispense with his personal attendance and to permit him to appear by his pleader not only on all dates of hearing but also to receive copies of documents on his behalf thereby meaning that he will not at all be attending any hearing during the entire proceeding of the case particularly during trial. In these circumstances, the only question that is to be decided is `whether the accused in a case of such nature as one in hand, whatever be the reason, be permitted to appear by his pleader on all hearings and if so, what would be the consequence of the trial held in such a manner?'

5. On a perusal of the records, it comes to be seen that already the petitioner has disowned the commitments of his earlier counsel stating that without his concurrence, the Advocate appointed by his father-in-law, has committed something thus disapproving and disowning all such acts done by the learned Advocate on his behalf and at this stage, under the cloak of having engaged yet another counsel, he has come forward to pray for the relief under Section 205 Cr.P.C.

6. It is submitted on the part of the petitioner that he is put under such pressure that he may not be able to be present at any stage of the trial and even to receive copies of documents and he would plead to permit his Lawyer to do the same on his behalf thereby meaning that even at the crucial stages he would not appear before the Court. If the Lawyer is permitted to receive the copies, for the preliminary questioning before trial and for the final questioning under Section 313 Cr.P.C. after trial, needless to mention at the time of delivery of the judgment and in such circumstances, it can never be imagined a Lawyer to take the place of the accused, needless to mention as to who will be taken into custody if the case ends in

conviction.

7. Normally, while permitting such applications, under certain exigencies, the Courts would order giving liberty to the trial Court to summon the accused on such crucial occasions for questioning, delivery of judgment etc., which could be done only in the presence of the accused and therefore, there cannot be a blanket order passed by the Court completely dispensing with the personal appearance of the accused on all dates of hearing and therefore passing such an order is ruled out, particularly when the accused does not come forward to undertake that at crucial stages of the case mentioned supra, when the personal attendance of the accused becomes indispensable, he would appear before the Court at any cost.

8. Moreover, from the order of the lower Court, it comes to be seen that the petitioner, through his earlier counsel, has promised to appear before the Court in March, 2003 and so far as this undertaking is concerned, the petitioner, without keeping-up the same and with scant regard to the privilege extended, has now come forward to attribute false reasons, accusing the earlier counsel having misrepresented, thus throwing the assurance made before the Court to the winds and there is no guarantee that the petitioner would not disown the present counsel also in the same manner and therefore at any stretch of imagination, the luxurious prayer sought for on the part of the petitioner cannot be complied with and it is only up to the petitioner to arrange things in such a manner so as to be present before the trial Court if and when he is required to appear to complete the trial in the manner required by law.

9. In support of his contentions, the learned counsel appearing on behalf of the petitioner, would also press into service a judgment of the Honourable Apex Court delivered in BHASKAR INDUSTRIES LTD. vs. BHIWANI DENIM & APPARELS LTD. AND OTHERS reported in (2001) 7 SCC 401 wherein it is held:

"…. Presence of the accused in the court is not for marking his attendance just for the sake of seeing him in the Court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused, the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case."

"…. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses."

10. Admitting the proposition as held by the Honourable Apex Court, it needs to be explained that so far as the case in hand is concerned, it is glaringly brought to the notice of the Court that already the petitioner has once disowned his undertaking to appear before the lower Court in March, 2003 stating that the earlier counsel has misrepresented thus forcing him to give such an undertaking. While such being the condition prevalent in the case in hand, taking into consideration that there is no guarantee that the petitioner would not again come forward to disown the commitments made through his counsel, this Court is of the view that no such risk could be taken in permitting the petitioner with a blanket order dispensing with his personal attendance on all hearings lock-stock and barrel as it comes to be prayed for and hence the petitioner does not become entitled to the benefit of the judgment of the Honourable Apex Court.

11. In the above circumstances, this Court is not able to see any error apparent or legal infirmity or inconsistency having crept into the order of the trial Court in dismissing the petition filed on behalf of the petitioner under Section 205 Cr.P.C. as per its order dated 8.1.2003 made in Crl.M.P.No.2716 of 2002 and therefore this Court does not see any valid or tangible reason to interfere with the well considered and merited order passed by the Court of Chief Metropolitan Magistrate, Chennai and hence the following order:
In result,
(i)the above criminal original petition is devoid of merits and the same is dismissed as such.
(ii)The order dated 8.1.2003 made in Crl.M.P.No.2716 of 2002 in C.C. No.4247 of 2002 by the Court of Chief Metropolitan Magistrate, Chennai, is hereby confirmed.

Consequently, Crl.M.P.No.2702 of 2003 is dismissed and Crl.M.P.No.5251 of 2003 is closed.

Index: Yes
Internet: yes
Rao

To
The Chief Metropolitan Magistrate,
Egmore, Chennai-8.

Rao